

## AGENDA

### STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, May 19, 2017 - 10:00 a.m.

Henrico County Manager's Conference Room  
4301 E. Parham Road, Henrico, Virginia 23228

- I. Call to Order and Roll Call (**Tab 1**)
- II. Approval of April 21, 2017 Minutes (**Tab 2**)
- III. Public Comment
- IV. Approval of Final Order (**Tab 3**)  

In Re: Gregory and Leah Thorpe  
Appeal No. 16-11
- V. Approval of Final Order - for Reconsideration (**Tab 4**)  

In Re: Appeal of Richard Criqui  
Appeal No. 16-8
- VI. Appeal Hearing (**Tab 5**)  

In Re: Appeal of Nihad AliAkbar  
Appeal No. 17-1
- VII. Request for Interpretation (**Tab 6**)  

Fairfax County Land Development Services
- VIII. Secretary's Report

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Updated December 27, 2016)

**J. Robert Allen, CBO**

**Chairman**

(Representing the Virginia Building & Code Officials Association)

**James R. Dawson**

**Vice Chairman**

(Representing the Virginia Fire Chiefs Association)

**Matthew Arnold**

(Representing the American Institute of Architects)

**W. Keith Brower, Jr.**

(Representing the Commonwealth at large)

**Vince Butler**

(Representing the Virginia Homebuilders Association)

**J. Daniel Crigler**

(Representing the Virginia Plumbing-Heating-Cooling Contractors Association)

**Alan Givens**

(Representing the Virginia Plumbing-Heating-Cooling Contractors Association)

**Joseph A. Kessler, III**

(Representing the Associated General Contractors of Virginia)

**Eric Mays, PE, CBO**

(Representing the Virginia Building & Code Officials Association)

**E. G. (Rudy) Middleton III**

(Electrical Contractor)

**Joanne D. Monday**

(Representing the Virginia Building Owners and Managers Association)

**Patricia S. O'Bannon**

(Representing the Commonwealth at Large)

**W. Shaun Pharr, Esq.**

(Representing the Apartment and Office Building Association of Metropolitan Washington)

**Aaron L. Zdinak, PE**

(Representing the Virginia Society of Professional Engineers)

**Justin I. Bell, Esq., Board counsel**

Assistant Attorney General

Financial Law and Government Support Section

Office of the Attorney General

**Alan McMahan, CBO**

Secretary

Office: (804) 371-7175

Main Office: (804) 371-7150

Cell: (804) 627-3689

alan.mcmahan@dhcd.virginia.gov

## **DRAFT MINUTES**

### **STATE BUILDING CODE TECHNICAL REVIEW BOARD MEETING**

Friday, April 21, 2017

RICHMOND, VIRGINIA

#### Members Present

Mr. J. Robert Allen, Chairman  
Mr. James R. Dawson, Vice Chairman  
Mr. W. Keith Brower  
Mr. Vince Butler  
Mr. J. Daniel Crigler  
Mr. Joseph A. Kessler, III  
Mr. Alan D. Givens  
Mr. Eric Mays, PE  
Ms. Joanne D. Monday  
Mr. W. Shaun Pharr, Esq.  
Mr. Aaron Zdinak, PE

#### Members Absent

Mr. Matthew Arnold  
Mr. E.G. Middleton, III  
Ms. Patricia S. O'Bannon

Call to Order	The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Chairman at approximately 10:00 a.m.
Roll Call	The attendance was established by the Secretary, Alan W. McMahan, Secretary, and constituted a quorum. Mr. Justin I. Bell, Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel.
Approval of Minutes	Mr. Mays moved to approve the minutes of the February 17, 2017 meeting as presented in the Review Board members' agenda package. The motion was seconded by Ms. Monday and passed unanimously with Messrs. Butler, Dawson and Pharr abstaining.
Public Comment	The Chairman opened the floor for public comment. The Secretary reported that no one was preregistered. The Chairman closed the public comment period.

Final Orders

Appeal of Richard Criqui: Appeal No. 16-6:

Prior to consideration of the final order, Mr. McMahan presented members a revised final order which included changes recommended by the Chairman. After review and consideration, Mr. Mays moved to approve the final order. The motion was seconded by Ms. Monday and passed with Messrs. Dawson, Butler, and Pharr, abstaining.

New Business

Appeal of Gregory & Leah Thorpe: Appeal No. 16-11 (continued from February 17, 2017 meeting):

A hearing reconvened with the Chairman serving as the presiding officer.

The following persons were sworn in and given the opportunity to present testimony:

Gregory Thorpe, property owner  
Leah Thorpe, property owner  
Greg Holt, homebuilder  
Ron Clements, for Chesterfield County  
Rick Witt, for Chesterfield County

Prior to any testimony, Mr. Dawson recused himself from the case due to his employment with Chesterfield County and exited the room.

The following exhibit was submitted by Thorpe, without objection, to supplement the Review Board members' agenda package:

*Exhibit A – Color photographs matching those in the Board Members' agenda package*

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Gregory & Leah Thorpe; Appeal No. 16-11:

After deliberation, Mr. Mays moved to uphold the building official and local appeals board decision that the required slope of the driveway required per the USBC section R401.3 can end 10 feet from the building and that the USBC does not prohibit a swale in the driveway that diverts the runoff towards the storm water collection system in the street. The motion was seconded by Mr. Brower and passed unanimously.

After deliberation, Mr. Givens moved to uphold the building official and local appeals board decision that the attachment of a 2" x 6" segment of lumber to the top of the bottom chord of a number of roof trusses is not a code violation per R802.10.4 and his decision per USBC 111.1 to accept the engineered detail prepared and sealed by James H. Fletcher P. E. for the attachment of the 2" x 6" segment of lumber to the top of the bottom truss chords. The motion was seconded by Mr. Crigler and passed unanimously.

Mr. and Mrs. Thorpe withdrew the remaining appeal item.

Interpretations

An interpretation request from the City of Suffolk was considered concerning the city's requirement that smoke detectors be installed in existing residential structures that were built prior to the requirement for smoke detectors in every bedroom. An Attorney General's opinion dated July 26, 2013 was presented to all Review Board members for consideration. After discussion, the board decided not to issue an interpretation.

Adjournment

The meeting was adjourned by motion of Mr. Allen at approximately 2:14 p.m.

Approved: \_\_\_\_\_

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Chairman, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board

Virginia:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE:       Appeal of Gregory and Leah Thorpe  
              Appeal No. 16-11

Hearing Date:     April 21, 2017

DECISION OF THE REVIEW BOARD

I.       PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II.     CASE HISTORY

In June of 2015, Gregory and Leah Thorpe (Thorpe) purchased a single-family detached home at 16300 Longlands Road in Chesterfield County from Finer

Homes, Inc. (Finer Homes), a licensed Class A contractor.

In June of 2016, Thorpes contacted the Chesterfield County Building Inspections Office (local code office, or County), the agency responsible for the enforcement of Part I of the 2012 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC) with concerns about potential code violations in their home.

In response, the local code office performed an inspection of Thorpe's home and consequently issued a Letter of Defect to Finer Homes for violations of VCC Sections R303.3 (*Bathrooms*) concerning a bathroom vent; R401.3 (*Drainage*) concerning the slope of the driveway; R802.10.4 (*Alteration to trusses*) on alterations made for the installation of insulation, a window and an HVAC platform; and P2609.2 (*Installation of materials*) on the installation of the master bath tub.

In September of 2016, the local code office issued a second Letter of Defect to Finer Homes to address violations of VCC Sections R502.8.2 (*Engineered wood products*) concerning a notch in the top chord of an engineered wood floor joist; and N1102.4.1 (*Building thermal envelope*) on an unsealed portion of the building envelope.

Concurrently, the local code office issued a Notice of Violation to Finer Homes for violation of VCC Sections R401.3 (*Drainage*) for the lack of slope at the home's concrete driveway; R502.6 (*Bearing*) for the lack of minimum bearing of floor joists at the foundation wall; R802.10.4 (*Alteration to trusses*) for roof trusses altered for the installation of a window and an HVAC platform.



Later in September of 2016, the local code office emailed Thorpe documenting its position on several code issues related to their home.

In response to the email, Thorpe filed an appeal with the Chesterfield County Local Board of Building Code Appeals (local appeals board) in October of 2016 on four issues described in the aforementioned email: 1.) that Section R401.3 does not prohibit the use of a swale beyond ten feet from the building to divert drainage; 2.) that local code office had accepted an engineer's detail on "padding" of the truss bottom chord; 3.) that local code office accepted the cut-out portion of an I-joist as a notch regulated by R502.8.2; 4.) and that the local code office had extended Finer Homes' compliance time for the correction of violations in the August 3, 2016 and September 16, 2016 letters of defect and the September 16, 2016 notice of violation.

The local appeals board heard the appeal in November of 2016 and ruled to uphold the local code office's decision.

Thorpe then filed an application for appeal with the Review Board concerning the three remaining issues.

A staff summary was drafted and distributed to the parties with an opportunity to submit objections, corrections or additions to the staff summary. All documents, written arguments and other correspondence were then compiled as part of an agenda package for a meeting of the Review Board and a hearing was conducted concerning the appeal. The Thorpes; a representative for Finer Homes; and County representatives and their legal counsel were present at the hearing.

### III. FINDINGS OF THE REVIEW BOARD

The first issue under appeal concerns surface drainage adjacent to the Thorpe's home as it relates to VCC Section R401.3, which states:

*R401.3 Drainage.*

*Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard to the dwelling unit. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall a minimum of 6 inches (152 mm) within the first 10 feet (3048 mm).*

*Exception: Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152 mm) of fall within 10 feet (3048 mm), drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of 2.0 percent away from the building.*

In its September 30, 2016 email addressing several outstanding code issues, the County informed the Thorpes that "Use of a swale or drain is not prohibited per R401.3 to divert the water towards the storm sewer systems once you get beyond 10 feet from the building." This statement is specifically what Thorpe appealed to the local appeals board and then to the Review Board.

On this matter, the Review Board finds that although VCC R401.3 has requirements for diverting surface drainage away from dwelling units, it does not address the management of surface drainage ten feet beyond a building's foundation. For this reason, the Review Board finds no justification for overturning the local code office's decision that the VCC does not prohibit a swale in the

driveway that diverts runoff towards the storm water collection system in the street.

The second issue under appeal concerns the wood roof trusses and whether the addition of the on-edge 2"x6" framing, or padding, on top of the bottom chords of the engineered trusses represents an alteration consistent with VCC Section R802.10.4; and if so, was the alteration done in accordance with that section, which reads:

***R802.10.4 Alterations to trusses.***

*Truss members shall not be cut, notched, drilled, spliced or otherwise altered in any way without the approval of a registered design professional. Alterations resulting in the addition of load (e.g., HVAC equipment, water heater) that exceeds the design load for the truss shall not be permitted without verification that the truss is capable of supporting such additional loading.*

In its testimony, the County asserted that the padding was added by Finer Homes to accommodate attic insulation and to raise the floor elevation, and that it did not require an engineer's drawing for the padding since it does not involve structural modification to the trusses. The County also testified that Finer Homes provided it with an engineered, stamped truss diagram by James Fletcher, a professional engineer, which specified the proper attachment of the padding to the bottom chords. As a result, the County accepted Mr. Fletcher's stamped truss diagram as an indication that the trusses met the requirements of the VCC, and therefore no code violations exist with respect to the trusses.

During their testimony, Thorpe argued that the addition of the 2"x6"

material on the bottom chords constitutes an alteration as referenced in R802.10.4 because the original truss design did not account for the additional weight of the added material, and because the trusses had been modified by Finer Homes, after their installation to accommodate a habitable attic. Thorpe also explained that the trusses have other damage unrelated to the padding which was never addressed by the County.

On this matter, the Review Board finds that although the parties disagree on whether the addition of the 2"x6" padding on the roof trusses constitutes an alteration, as it relates to VCC R802.10.4, the same section authorizes building officials to accept alterations when designed and evaluated by a registered design professional licensed in the Commonwealth of Virginia, which occurred in this case. Additionally, VCC Section 113.7 requires the building official to accept a report from an approved inspection agency unless there is cause to reject it.

The tertiary issue under appeal concerning compliance time for the correction of code violations as it relates to VCC Sections 113.6 and 115.2 was withdrawn by Thorpe during the hearing.

#### IV. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the County building department,

and the local appeals board's upholding of that decision, to be, and hereby is, upheld.

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Chairman, State Technical Review Board

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Alan W. McMahan, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

**Review Board staff note:**

A revised final order on the Richard Criqui Final Order (Appeal No. 16-8) is included in this Review Board package for reconsideration, in accordance with § 2.2-4023.1 of the Code of Virginia (see below). Staff is requesting that it be reconsidered to add Items 6 and 7 which were inadvertently omitted from the Final Order that was approved at the Review Board's April 21, 2017 meeting.

**§ 2.2-4023.1. Reconsideration.**

A. A party may file a petition for reconsideration of an agency's final decision made pursuant to § 2.2-4020. The petition shall be filed with the agency not later than 15 days after service of the final decision and shall state the specific grounds on which relief is requested. The petition shall contain a full and clear statement of the facts pertaining to the reasons for reconsideration, the grounds in support thereof, and a statement of the relief desired. A timely filed petition for reconsideration shall not suspend the execution of the agency decision nor toll the time for filing a notice of appeal under Rule 2A:2 of the Rules of Supreme Court of Virginia, unless the agency provides for suspension of its decision when it grants a petition for reconsideration. The failure to file a petition for reconsideration shall not constitute a failure to exhaust all administrative remedies.

B. The agency shall render a written decision on a party's timely petition for reconsideration within 30 days from receipt of the petition for reconsideration. Such decision shall (i) deny the petition, (ii) modify the case decision, or (iii) vacate the case decision and set a new hearing for further proceedings. The agency shall state the reasons for its action.

C. If reconsideration is sought for the decision of a policy-making board of an agency, such board may (i) consider the petition for reconsideration at its next regularly scheduled meeting; (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt; or (iii) notwithstanding any other provision of law, delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the agency that provides administrative support to the board, in which case a decision on the reconsideration shall be rendered within 30 days of receipt of the petition by the board.

D. Denial of a petition for reconsideration shall not constitute a separate case decision and shall not on its own merits be subject to judicial review. It may, however, be considered by a reviewing court as part of any judicial review of the case decision itself.

E. The agency may reconsider its final decision on its own initiative for good cause within 30 days of the date of the final decision. An agency may develop procedures for reconsideration of its final decisions on its own initiative.

F. Notwithstanding the provisions of this section, (i) any agency may promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration and (ii) any agency that has statutory authority for reconsideration in its basic law may respond to requests in accordance with such law.

2016, c. 694.

Virginia:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE:       Appeal of Richard Criqui  
              Appeal No. 16-8

Hearing Date:    February 17, 2017

DECISION OF THE REVIEW BOARD

I.       PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

In August of 2014, the Rockbridge County Building Department (local code office) issued a building permit, under the 2012 VCC, to Larry and Eileen Engle (Engle), a licensed Class A contractor, for the construction of a single-family dwelling on property they owned at 135 Ponds Drive in Lexington.

In May of 2015, the local code office issued a Certificate of Occupancy for the dwelling to Engle who then sold it to Richard and Elizabeth Criqui (Criqui). Two months later, Criqui took occupancy of the dwelling.

In June of 2016, Criqui noticed standing water in the crawl space and attributed it to seasonal and chronic groundwater, and storm water-related issues. As a result, Criqui asked the local code office to cite Engle for potential VCC violations concerning the construction of the home's footing and foundation.

In July of 2016, the local code office notified Criqui it would not issue a Notice of Violation because Engle had met the requirements of the "2012 International Residential Code with Virginia amendments."<sup>1</sup>

Subsequently, Criqui appealed the local code office's decision to the Rockbridge County Board of Building Code Appeals (local appeals board) which heard the appeal in September of 2016 and ruled to uphold the local code office's decision.

Criqui then further appealed to the Review Board and a hearing was held before the Review Board with Criqui; the Engles; and the County's building official and legal counsel, present.

<sup>1</sup> Excerpted from Rockbridge County letter dated July 19, 2016



Consequently, Review Board staff conducted an informal fact-finding conference for the appeal, prepared the record and scheduled a hearing before the Review Board. In February of 2017, a hearing before the Review Board was conducted with Criqui, the Engles and representatives of the local code office, in attendance.

### III. FINDINGS OF THE REVIEW BOARD

Criqui appeals the local code office's July 19, 2016 decision to not issue a Notice of Violation to Engle on the design and construction of Criqui's footing and foundation, and the local appeals board upholding of that determination. Subsequent to the testimony on the appeal, the Review Board identified the following five items for consideration:

1. Whether a violation of VCC § R401.3 (*Drainage*) exists relative to the exterior grading adjacent to the dwelling

Section R401.3 requires, in part, that lots be graded to drain surface water away from foundation walls and fall a minimum of 6 inches within the first 10 feet from foundation walls. On this issue, Criqui testified that Engle did not slope the finished grade around the home or the asphalt driveway away from the foundation, which he asserted contributed to the standing water in the crawl space. The local code office testified the slope of the exterior grading adjacent to the foundation passed final inspection. The office also testified that the asphalt driveway between

the house and the detached garage sloped the required minimum of 2.0 percent away from the building, as allowed in the exception to VCC § R401.3 for impervious surfaces. Engle agreed with the facts on this issue as presented by the local code office.

On this matter, the Review Board finds that while there is disagreement between Criqui and Engle about subsequent grading around the foundation, the photographic evidence submitted by Criqui shows that the impervious surface (i.e. the asphalt driveway) abutting the foundation, does not, in fact, slope away from the foundation a minimum of 2.0 percent within the first ten feet of the building, a violation of VCC § R401.3.

2. Whether a violation of VCC § 405.1 (Concrete or masonry foundations) exists relative to the dwelling's drainage system

During their testimony, all parties conceded that a perimeter drain was installed below grade around the dwelling's foundation; however, Criqui alleged a potential code violation of VCC § R405.1 exists concerning its installation. His assertion was derived from concern about the standing water in the crawl space of the dwelling. While photographs submitted by Criqui show areas of standing water in the crawl space, no evidence was provided proving it was caused by the improper installation of the dwelling's drainage system. During testimony, both Engle and the County code office contended that the drains were installed in accordance with VCC § R405.1. Consequently, the Review Board finds that no violation of VCC §

R405.1 exists in this situation.

3. Whether a violation of VCC § R408.6 (*Finished grade*) exists relative to the height of the under-floor space

This issue concerns the finished grade of the under-floor surface and its height relative to the outside finished grade. During testimony, all parties conceded that the finished grade of the under-floor surface was lower than the outside grade.

Section R408.6 requires that the finished grade of under-floor surfaces be as high as the outside finished grade, where surface water does not readily drain from the building site, unless an approved drainage system is provided. From the photos submitted, the Review Board finds that the standing water in the crawl space clearly shows that the surface water does not readily drain from the building site; and since there was no evidence provided which indicated that an approved drainage system was installed in the foundation walls to remedy the condition, the Review Board finds that a violation of VCC § 408.6 does exist.

4. Whether a violation of VCC § R401.4 (*Soil tests*) exists relative to soil testing methodologies.

During testimony, Criqui alleged that the County's Soil Policy was deficient and inconsistent with the spirit and intent of the VCC. Despite his contention, the Chairman explained to the parties that the Review Board does not have jurisdiction over local government policies, in this case, a local soil policy. In this matter, the Review Board finds that VCC § R401.4 explicitly assigns responsibility for

determining whether to require a soil test for a given property to the local building official. As a result, the Review Board finds that no violation of VCC § 401.4 exists.

5. Whether a violation of VCC § R403.1.8 (*Foundations on expansive soils*) exists relative to the classification of soil below the dwelling.

During testimony, Criqui referenced a geotechnical soil report from ECS in the Review Board's agenda package proved that expansive soils do exist on the property.

In this matter, the Review Board finds that although the local code office did not have the benefit of a geotechnical soil report when determining whether Criqui's property had expansive soils during the permitting process, the December 14, 2016 ECS report in the Review Board's agenda package shows the presence of expansive soils on Criqui's property. In fact, the handauger borings in the report indicate expansive soil conditions in the crawl space. The applicable code section, VCC §R403.8.1, states in its entirety:

*"Foundation and floor slab for buildings located on expansive soils shall be designed in accordance with Section 1808.6 of the International Building Code."*

As a result, the Review Board finds that the local code office, upon learning of the existence of expansive soils below Criqui's home, should have cited Engle for a violation of VCC § R403.8.1 because the original design and construction of the home's footing and foundation did not take into consideration the soil characteristics of the property.

6. Whether a violation of VCC § R406 (Foundation Waterproofing and Dampproofing) exists relative to waterproofing on the dwelling.

This issue pertains to whether waterproofing was installed around the exterior of the home's foundation wall. During testimony, the County building department referenced the home's inspection history in the Review Board's Agenda Package showing an approved draintile inspection in September of 2014 which noted "8" cmu foundation walls parged and blackcat to projected grade."

In this matter, the Review Board finds that because the County building department's testimony demonstrated the existence of waterpproofing on the home, and because there was no evidence submitted to the contrary, no violation of VCC § R406 exists.

7. Whether a violation of VCC § R102.1 (Purpose) exists relative to the standing water in the crawl space

This issue concerns whether the intermittent presence of standing water in the home's crawl space represents a violation of VCC § R102.1, which reads in pertinent part:

*"102.1 Purpose. In accordance with Section 36-99 of the Code of Virginia, the purpose of the USBC is to protect the health, safety and welfare of the residents of the Commonwealth of Virginia, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier free*

*provisions for the physically handicapped and aged."*

On this matter, the Review Board finds that the presence of standing water in the home's crawl space does constitute a violation of VCC § R102.1 as it relates specifically to the code violations identified in Items #1, #3 and #5, which, by their very nature, are contrary to the intended purpose of the VCC.

#### IV. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the County building department, and the City appeals board upholding of that decision to be, and hereby is, overturned, with respect to Items #1, #3, #5, and #7 and requires the local code office to issue Notices of Violation to Engle relative to those items. The Review Board also orders the decision of the County building department, and the City appeals board to be, and hereby is, upheld with respect to Items #2, #4, and #6.

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Chairman, State Technical Review Board

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty

(30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Alan W. McMahan, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

VIRGINIA:

BEFORE THE  
VIRGINIA STATE BUILDING CODE  
TECHNICAL REVIEW BOARD

IN RE:      Appeal of Nihad AliAkbar  
              Appeal No. 17-1

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE:       Appeal of Nihad AliAkbar  
              Appeal No. 17-1

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1.       In February of 2016, the Fairfax County Department of Code Compliance (FCDCC), the agency responsible for the enforcement of Part I of the 2012 Virginia Uniform Statewide Building Code (the Virginia Construction Code, or VCC), in response to a complaint, conducted an inspection of property located at 3706 Franconia Road in Alexandria, owned by Nihad AliAkbar (AliAkbar).

2.       As a result of the inspection, the FCDCC issued a Corrective Work Order (Order) to AliAkbar for multiple VCC violations for construction performed on, or related to, a detached accessory structure on the site.<sup>1</sup>

3.       On March 29, 2016, the FCDCC consequently issued a Notice of Violation (Notice) to AliAkbar for the remaining code violations from the Order, specifically VCC Sections 108.1 (*When permits are required*), 113.3 (*Minimum inspections*) and 113.8 (*Final Inspection*) related to the conversion of an accessory structure into a second dwelling, the installation of a sewer lateral between the house and the accessory structure, and the construction of an A-frame roof over the existing flat roof of the same building.

4.       On April 29, 2016, AliAkbar filed an appeal to the Fairfax County Board of

<sup>1</sup> AliAkbar claims the prior owner performed the cited work.

Building Code Appeals Board (local appeals board) which heard the appeal in December of 2016 and upheld the decision of the FCDCC.

5. AliAkbar then appealed to the Review Board.

6. Review Board staff contacted the parties for the submittal of any documents the parties believed were necessary for the Review Board to consider in the appeal. This staff document was then drafted and distributed to the parties, and an opportunity given for the submittal of objections, corrections or additions to the staff document and the submittal of any additional documents for the record and written arguments. An appeal hearing before the Review Board was then scheduled.

Suggested Issue for Resolution by the Review Board

1. Whether to overturn the FCDCC's March 29, 2016 Notice of Violation due to its lack of reference to VCC Section 119 (*Appeals*) as required by VCC Section 115.2 (*Notice of violation*),

2. And, if ruling in the positive, whether to render the appeal moot due to a lack of application of the code.

Or, if ruling in the negative:

3. Whether to overturn the FCDCC's decision that violations do exist relative to VCC Section 108.1 and the local appeal board's upholding of that decision.

4. Whether to overturn the FCDCC's decision that violations do exist relative to VCC Section 113.3 and the local appeal board's upholding of that decision.

5. Whether to overturn the FCDCC's decision that violations do exist relative to VCC Section 113.8 and the local appeal board's upholding of that decision.

# Combined Documents

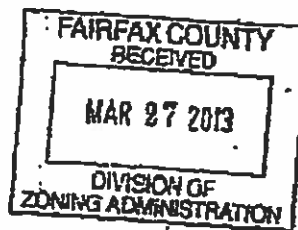


## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

March 26, 2013

Ashraf Gadelrab & Souad Bendounali  
3706 Franconia Road  
Alexandria, Virginia 22310



RE: Vested Rights Determination  
3706 Franconia Road  
Burgundy Farm, Lot 22, Block B, Section 5  
Tax Map Ref.: 82-2 ((5)) (B) 22  
Zoning District: R-3

Dear Mr. Gadelrab & Ms. Bendounali:

This letter is in response to your written inquiry dated February 27, 2013, requesting a vested rights determination for the referenced property. In a brief follow-up meeting, you indicated that you would like to replace the accessory structure's deteriorated flat roof with a pitched roof. You stated that the existing flat roof is approximately 8 feet above finished ground level. Supplementing your request is a plat dated March 4, 2013, showing a single family dwelling, an accessory structure (labeled frame workshop) and driveway pavement covering most of the rear yard. According to the plat, the accessory structure is located about 13 feet from the side lot line and 4 feet from the rear lot line. In your letter, you refer to the structure as a storage building, though you stated that you are not currently using it due to the deteriorated roof.

The referenced property is zoned R-3 Residential District, Three Dwelling Units/Acre and is developed with a single family dwelling built in 1959 and an accessory structure. The R-3 District has the following minimum yard requirements: Front - 30 feet; Sides - 12 feet and Rear - 25 feet. Pursuant to Par. 10 of Sect. 10-104 of the Zoning Ordinance, a freestanding accessory structure greater than seven feet in height (measured from the highest point of the roof, to the lowest point at the grade) may not be located in a minimum required side yard and must also be located at least a distance equal to its height from the rear lot line. While the structure meets the 12 foot minimum required side yard, it does not meet the approximately 8 foot setback requirement from the rear lot line. Furthermore, the referenced property is subject to a minimum rear yard coverage limitation of 30 percent, pursuant to Par. 3 of Sect. 10-103. However, the plat shows the structure exceeding the coverage limitation, as it covers about 43 percent (65 percent if including driveway pavement) of the 25 foot minimum required rear yard. For these reasons, the structure does not meet Zoning Ordinance location and coverage requirements.

According to our records, Building Permit #86119B1030 was approved on April 29, 1986 for an accessory structure containing 610 square feet of garage space and 200 square feet of storage space

Excellence \* Innovation \* Stewardship  
Integrity \* Teamwork \* Public Service

Department of Planning and Zoning  
Zoning Administration Division  
Ordinance Administration Branch  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035-5505  
Phone 703-324-1314 FAX 703-803-6372  
[www.fairfaxcounty.gov/ozp/](http://www.fairfaxcounty.gov/ozp/)



and located at least 12 feet from side lot lines and eight feet from the rear lot line. The structure passed final inspection on February 11, 1987. Pursuant to §15.2-2307 of the *Code of Virginia*, if (a) local government has issued a building permit, the structure was constructed in accordance with the building permit, and a certificate of occupancy was issued, or (b) the owner of the building has paid taxes for the structure for more than 15 years, the structure is legal and may remain. As the structure passed final inspection, §15.2-2307 is applicable to the structure and its encroachment into the rear setback requirement and its excessive rear yard coverage are legal. However, there is no record of any rear yard driveway pavement receiving zoning approval or being taxed. Therefore, §15.2-2307 is not applicable to the pavement, and the asphalt located within the 25 foot minimum required rear yard should be removed.

Regarding the proposal to replace the flat roof with a pitched roof, a structure that does not meet Zoning Ordinance location requirements but is legal pursuant to §15.2-2307 may remain, provided it is not replaced or enlarged. Such a structure may also be repaired, with an exact replacement of the roof considered a repair. Therefore, you may replace the existing roof with a new flat roof the same distance above finished grade as the existing roof. However, a pitched roof is not permitted, as it would enlarge the structure by making it taller. A modification to increase the roof height could only be approved if the structure were relocated or modified to meet the current location requirements for accessory structures. Lastly, as the structure was referenced as a storage building, please note that Par. 25 of Sect. 10-102 not does permit more than 200 square feet of the structure to be used for storage.

This determination is based upon the facts presented in your letter, our conversations and the applicable Fairfax County Zoning Ordinance provisions in effect as of the date of this letter. If the facts as presented change or if the applicable provisions of the Zoning Ordinance change subsequent to the issuance of this determination, the determination may be subject to modification.

I trust that this letter satisfactorily responds to your request. Should you have any questions, please feel free to contact me at (703) 324-1314.

Sincerely,



Matthew Mertz  
Assistant to the Zoning Administrator

cc: Jeffrey C. McKay, Supervisor, Lee District  
Leslie B. Johnson, Zoning Administrator  
Michelle O'Hare, Deputy Zoning Administrator, Ordinance Administration Branch  
Diane Johnson-Quinn, Deputy Zoning Administrator, Zoning Permit Review Branch ✓



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

**DATE OF ISSUANCE:** March 29, 2016

**METHOD OF SERVICE:** OFFICE OF THE SHERIFF

**LEGAL NOTICE ISSUED TO:** Nihad Jaaffar Aliakbar

**ADDRESS:** 3706 Franconia Rd.  
Alexandria, VA 22310

**LOCATION OF VIOLATION:** 3706 Franconia Rd.  
Alexandria, VA 22310

**TAX MAP REF:** 0822 05B 0022

**CASE #:** 201507829 **SR#:** 123437

**ISSUING INVESTIGATOR:** Manuel Felipe, (703) 324-1190

You were issued a Corrective Work Order on February 09, 2016 for violations of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014. Staff confirmed on March 28, 2016 that the violations itemized below remain.

**Explanation:** On January 29, 2016, County staff inspected the above referenced residential premises and discovered that construction, alterations and installations have been performed without the issuance of the required permit(s), inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

- An accessory structure was converted into a second dwelling, with a full bathroom, two bedrooms and a kitchen.
- A sewer lateral was connected to the existing house from the accessory structure.
- A new (A-frame) roof was constructed over an existing accessory structure with a flat roof.

The permits that may be required, but not limited to, are the following:

---

Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

Nihad Jaaffar Aliakbar  
March 29, 2016  
SR 123437  
Page 2

- Building
- Electrical
- Mechanical
- Plumbing
- Demolition

**Order:** Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections, Section 113.8 Final Inspection*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

**Corrective Action Required:**

1. Apply for and obtain the necessary County permits for the work described above within 30 calendar days from the date you receive this Order, or obtain a County permit to demolish the work described above within the same timeframe.
2. Schedule and pass the required County inspection(s) for the work described above within 30 calendar days from the date you are issued the required permit or permits for construction or demolition.
3. Contact me at (703) 324-1190 within the timeframe established to confirm the violation(s) have been abated.
4. Call (703) 222-0455 to schedule all building inspections related to this matter. Please reference CASE #: 201507829.
5. Make this notice available for the Inspector performing the inspections throughout the inspections process.

**Note:**

\*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center  
The Herrity Building  
12055 Government Center Parkway, 2nd Floor  
Fairfax, Virginia 22035  
Telephone: 703-222-0801

\*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised That any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

\*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

\*Additional fees for unpermitted work may apply.

You are directed to notify Manuel Felipe by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703) 324-1190 within three (3) working days from the date you receive this Order, of your election to accept or reject the terms of this Order.

You have the right to appeal this decision within 30 days to the Fairfax County Board of Building and Fire Prevention Code Appeals. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals  
Attention:  
Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals  
Office of Building Code Services  
Department of Public Works and Environmental Services  
12055 Government Center Parkway, Suite 444  
Fairfax, Va. 22035-5504  
Telephone: (703) 324-1780

Information and forms can also be obtained at:

[http://www.fairfaxcounty.gov/dpwes/publications/codemods\\_appeals.htm](http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm)

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision.

Failure to correct these defects within the time limits specified shall result in enforcement action being taken under the applicable State and County Codes.



Nihad Jaaffar Aliakbar  
March 29, 2016  
SR 123437  
Page 4

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:

  
\_\_\_\_\_  
Signature

Manuel Felipe  
(703) 324-1190  
Manuel.Felipe@fairfaxcounty.gov  
Technical Assistant to the Building Official  
Department of Code Compliance

CC: Case File



## Building Code Appeal Request

### PROJECT INFORMATION

Project Name: 3706 Franconia Rd., Alexandria, VA 22310

Project Address: 3706 Franconia Rd., Alexandria, VA 22310

Permit or case number: Case # 201507829 / SR#123437 Tax map number: 0822 05B 0022

### APPLICANT INFORMATION

Applicant Name: Aristotelis A. Chronis, Esq. / CHRONIS, LLC ☐ Owner ☒ Owner's agent

Address: 1145 N. Vernon St.

City: Arlington State: VA ZIP: 22201

Phone: 703-888-0353 Email: achronis@chronislaw.com

### OWNER INFORMATION

☐ See applicant information

Owner Name: Nihad Jaaffar AliAkbar

Address: 3706 Franconia Rd.

City: Alexandria State: VA ZIP: 22310

Phone: 202-744-5650 Email: nja1978@gmail.com

### APPEAL INFORMATION

Appealing decision made on the date of by ☒ Building Official ☐ Fire Official ☐ Property Maintenance Official  
rendered on the following date: -

Code(s) (IBC, IMC, IPMC, etc.) and year-edition: USBC 2012

Section(s): USBC 108.1; USBC113.3; USBC 113.8

### REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

Nihad AliAkbar (Owner), by and through his above-referenced attorney, is submitting this Appeal of the above-referenced Notice of Violation issued March 29, 2016 (see attached) on the grounds that he is unable to comply with the terms of the Violation Notice without further guidance from the Fairfax County Zoning Office, which, on information and belief, is in the process of issuing Zoning Violations for the Accessory Structure which has been allegedly converted into a second dwelling and the alleged new (A-frame) roof which was constructed over the existing Accessory Structure which had a flat roof. Without further direction from the Zoning Office, Owner is unable to determine whether Building or Demolition Permits will be needed as the Zoning Office may rule that the Accessory Structure should be demolished or that it may be permitted to remain upon the restoration of the flat roof. (If the Accessory Structure is ordered to be demolished there will be no need for the sewer lateral.) Similarly, Owner is unable to determine what items within the Accessory Structure may be permitted to remain pursuant to the Zoning Office. Such determinations by the Zoning Office may be subject to an Appeal or a subsequent approval to allow these items to remain which may require further applications and public hearings. As such, Owner is further filing this Appeal to request a stay of any enforcement proceedings until such time as the Zoning issues are resolved.

Please return the completed form and any supporting documentation to the address or email below.

Chairman, Fairfax County Board of Building Code Appeals -  
12055 Government Center Parkway, Suite 444 -  
Fairfax, VA 22035-5504 -  
Attention: Secretary to the Board -  
[buildingofficial@fairfaxcounty.gov](mailto:buildingofficial@fairfaxcounty.gov)




# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** November 17, 2016 160427.OAP  
3706 Franconia Road

**TO:** Chairman and Members  
Fairfax County Board of Building and Fire Code Appeals

**FROM:** Brain Foley  
Building Code Official  
Land Development Services

**VIA:** Manuel Felipe   
Code Compliance Investigator  
Department of Code Compliance

**SUBJECT:** December 14, 2016 Appeal Hearing

**REFERENCE:** Appeal of Nihad Jaaffar Aliakbar  
3706 Franconia Road  
Alexandria, VA 22310-2130

**CODE:** 2012 Virginia Construction Code

Staff of the Department of Code Compliance (DCC) respectfully request that the Fairfax County Board of Building and Fire Code Appeals (Board) uphold the decision in the Notice of Violation dated March 29, 2016 that the referenced property is in violation of the Virginia Construction Code (VCC).

### Background Information

The referenced property is developed as a single family detached dwelling unit.

In response to a complaint regarding unpermitted work, an inspection of the referenced property was conducted on January 29, 2016.

During the inspection, DCC Investigator Manuel Felipe observed unpermitted work to the dwelling (photos attached), as noted below.

- An accessory structure was converted into a second dwelling, with a full bathroom, two bedrooms and a kitchen.
- A sewer lateral was connected to the existing house from the accessory structure.
- A new (A-frame) roof was constructed over an existing accessory structure with a flat roof.

### **Notice of Violation**

Notice of Corrective Work Order (CWO) was issued to the owner, on February 9, 2016. Based on the February 9, 2016 CWO, a Notice of Violation (Notice) was issued on March 29, 2016 (attached) for the following violations of the VCC.

### **Appellant Position**

Nihad Aliakbar (owner), through his attorney, is submitting this appeal of the Notice issued March 29, 2016 (see attached) on the grounds that he is unable to comply with the terms of the violation without further guidance from the Fairfax County Zoning Office, which on information and belief, is in the process of issuing zoning violations for the accessory structure, which has been allegedly converted into a second dwelling and the alleged new (A-frame) roof which was constructed over the existing accessory structure which had a flat roof. He further states that he does not want to act, without further direction from the Zoning Office, which may rule that the accessory structure should be demolished or that it may be permitted to remain upon the restoration of the flat roof. Such determination by the Zoning Office may be subject to an appeal or a subsequent approval to allow these items to remain which may require further applications and public hearings. As such, the owner is further filing this appeal to request a stay on any enforcement proceedings until such time as the zoning issues are resolved.

### **County Position**

The county seeks to work cooperatively with the property owners to identify reasonable timelines to come into compliance. County staff does consider and often grants extensions of the prescribed timelines when compliance is being diligently pursued by the owner. In this case, the appellant did file an appeal application A 2016-LE-011, which was filed and accepted on August 18, 2016, and has a public hearing scheduled for November 16, 2016, before the Board of Zoning Appeals (BZA). A copy of the BZA appeal is attached. The County granted an extension to December 14, 2016 until after the BZA hearing which was originally scheduled on November 16, 2016. It has been brought to our attention that the BZA hearing has been moved to February 15, 2017. Staff does not support any further deferrals of this appeal due to the year time frame to have a case heard in court from the time of discovery of the violations, which was January 29, 2016.

### **Recommendation**

The County does not support any further deferrals of this appeal. The County reserves the right to pursue litigation after December 14, 2016, in order to meet the statutes of limitation to pursue legal action, should the matter not be resolved through the zoning appeal process.

## RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the VCC Code/\_\_\_\_ Edition;  
and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and  
WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and  
WHEREAS, the Board has fully deliberated this matter, now, therefore, be it

RESOLVED, that the matter of

Appeal No. 160427.048 3706 Franconia Road  
In RE: NIHAD JAFFAR AHABDAR V. BUILDING OFFICIAL

The appeal is hereby DENIED for the reasons set out below.

NON-PERMITTED WORK ON AN ADDITIONAL DWELLING  
HAD OCCURED ON THE SITE.

FURTHER, be it known that:

1. This decision is solely for this case and its surrounding circumstances;
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
4. All of the following conditions be observed.

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

Date: DECEMBER 14, 2016

Signature: Michael S. May  
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

I Carl Guerra-Mora hereby certify that this is  
CUSTODIAN  
a true copy of a Fairfax County Department of  
Public Works & Environmental Services record of which  
I am a custodian.

Carl Guerra-Mora  
CUSTODIAN

I Brian Foley hereby certify that this is  
SUPERVISOR OF CUSTODIAN  
a true copy of a Fairfax County Department of  
Public Works & Environmental Services record of  
which Carl Guerra-Mora is the custodian and that  
CUSTODIAN

Carl Guerra-Mora  
CUSTODIAN  
Brian Foley  
SUPERVISOR OF CUSTODIAN

English

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DATE & TIME	STATUS OF ITEM	LOCATION
December 23, 2016, 11:30 pm	Delivery status not updated	
The delivery status for this item has not been updated as of December 23, 2016, 11:30 pm		
December 23, 2016, 7:26 pm	Arrived at USPS Facility	ARLINGTON, VA 22207
December 23, 2016, 9:30 am	Out for Delivery	ARLINGTON, VA 22209
December 23, 2016, 9:20 am	Sorting Complete	ARLINGTON, VA 22209
December 23, 2016, 8:11 am	Arrived at Unit	ARLINGTON, VA 22209
December 23, 2016, 6:17 am	Departed USPS Facility	MERRIFIELD, VA 22081
December 21, 2016, 9:15 pm	Arrived at USPS Facility	MERRIFIELD, VA 22081

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COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
State Building Codes Office and Office of the State Technical Review Board  
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219  
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: alan.mcmahan@dhd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- ☒ Uniform Statewide Building Code  
☐ Statewide Fire Prevention Code  
☐ Industrialized Building Safety Regulations  
☐ Amusement Device Regulations

Appealing Party Information (name, address, telephone number and email address):

Nihad Jaaffar AliAkbar (Owner)  
c/o Aristotelis A. Chronis, Esq. (Attorney)  
CHRONIS, LLC  
1145 N. Vernon St.,  
Arlington, VA 22201  
703-888-0353  
achronis@chronislaw.com

Opposing Party Information (name, address, telephone number and email address of all other parties):

Fairfax County Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, VA 22035-5508  
703-324-1300  
Brian.Foley@fairfaxcounty.gov / Carla.Guerra-Moran@fairfaxcounty.gov

Additional Information (to be submitted with this application)

- ☐ Copy of enforcement decision being appealed
- ☐ Copy of record and decision of local government appeals board (if applicable and available)
- ☐ Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January, 2017, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

**Note:** This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant:

Aristotelis A. Chronis

Name of Applicant: Nihad Jaaffar AliAkbar, by counsel - Aristotelis A. Chronis  
VSB # 45267



ARISTOTELIS A. CHRONIS  
1145 N. VERNON ST.  
ARLINGTON, VA 22201  
TEL 703.888.0353  
FAX 703.888.0363  
achronis@chronislaw.com

## MEMORANDUM

To: State Building Code Technical Review Board  
From: Aristotelis A. Chronis, Attorney for Appellant  
Date: January 4, 2017  
Re: Appellant: Nihad Jaaffar AliAkbar (Owner)  
Appeal of Fairfax County Board of Building Code Appeals Decision in  
Appeal No. 160427.0AP  
Subject Property: 3706 Franconia Road, Alexandria, VA 22310-2130

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### **STATEMENT IN SUPPORT OF APPEAL ADDITIONAL GROUNDS OF DEFENSE STATEMENT OF SPECIFIC RELIEF SOUGHT**

Nihad Jaaffar AliAkbar (Appellant) by counsel, respectfully submits this Statement in Support of Appeal / Additional Grounds of Defense / Statement of Relief Sought in support of the above-referenced appeal of the decision of Fairfax County Board of Building Code Appeals rendered December 14, 2016 in Appeal No. 160427.0AP regarding a Notice of Violation dated March 29, 2016 for 3706 Franconia Road, Alexandria, VA 22310-2130 (the "Subject Property"). As was raised at the December 14, 2016 hearing, Appellant is asking that the underlying Notice of Violation be overturned and dismissed or alternatively be modified to allow for corrective action to be completed after the resolution of the pending Variance/Special Permit application with the Fairfax County Zoning Department, which if successful, will grant zoning approval to the previously-built detached accessory structure to allow for the permitting and inspection of Detached Accessory Structure, thereby resolving the Notice of Violation.

In support of the instant Application, Applicant has attached the following documents which were all part of the written record of the Fairfax County Board of Building Code Appeals:

- Resolution of the Fairfax County Board of Building Code Appeals in Appeal No. 160427.0AP dated December 14, 2016.
- Memorandum from Brian Foley, Building Code Official, to Fairfax County Board of Building and Fire Code Appeals dated November 17, 2016.
  - Attachments
    - Building Code Appeal Request
    - Notice of Violation dated March 29, 2016 (Enforcement Decision)
    - Zoning Appeal Application filed May 27, 2016
    - Notice of Zoning Violation dated April 29, 2016

Appellant incorporates the grounds of appeal contained within the Building Code Appeal Request as further supplemented at the December 14, 2016 hearing before the Fairfax County Board of Building Code Appeals. As was raised at such hearing, Appellant is asking for the overturning/dismissal of the Notice of Violation which was defective and in violation of the express provisions of the 2012 Virginia Construction Code pertaining to Violations and Appeals. Section 115.2 directs the building official to issue a written notice of violation if any violations of the code or any directive or orders of the building official have not been corrected or complied within a reasonable time. The Notice of Corrective Work Order directing the permitting and inspection of a detached accessory structure which had been converted by prior owners of the Subject Property into a second dwelling with a full bathroom, two bedrooms and a kitchen was issued on February 9, 2016. As explained throughout the course of the Appeals process, further zoning approval in the form of a Variance and/or Special Permit would be required to allow for the interior renovations performed by the prior owners and the A-frame roof to remain. Such zoning relief, even if applied for on the date of the Corrective Work Order was issued – a premature action as the Zoning Violation was not issued until April 29, 2016 – could nevertheless not have been processed within 90 days at a minimum. (Such applications can normally take six to nine months to be processed.) As such, the issuance of the Notice of Violation on March 29, 2016, a mere 49 days after issuance of the Corrective Work Order, violates Section 115.2, which only allows for the issuance of the Notice of Violation if the violation has not been corrected or complied within a reasonable time, as 49 days is not reasonable time for compliance when six to nine months would likely be required for zoning approval. Furthermore the Notice of Violation itself seeks Corrective Action to be completed a mere 30 days thereafter, which again would have been impossible given the zoning department timeframes at issue in this case. For the above-stated reasons, the Notice of Violation should be overturned/dismissed per Section 115.2 of the 2012 Virginia Construction Code.

Without waiving the foregoing defense, the Notice of Violation should further be overturned/dismissed based on the failure of the Notice of Violation to indicate the right of appeal by referencing the appeals section found in the 2012 Virginia Construction Code, as is expressly required by Section 115.2. Section 119 of the 2012 Virginia Construction Code specifically outlines the Right of Appeal (Section 119.5) and further explains the LBBCA's power to uphold, reverse or modify the decision of the official, and the further right of appeal to the State Technical Review Board (Section 119.7). The inclusion of language specifically referencing Section 119 is an important right afforded to property owners who have found themselves subject to an alleged violation, as it further would lead them to the Virginia Construction Code to review potential defenses, such as those afforded by Section 115.2. The

drafters of the Virginia Construction Code certainly believed that Notices of Violation, when issued, include this reference to the appeals section by including such requirement in Section 115.2, and the failure to include the specific reference renders the Notice of Violation void and defective on its face, and therefore it should be overturned/dismissed.

Alternatively, without waiving the foregoing defenses, Applicant is at a minimum asking that the Notice of Violation be modified to allow for a longer compliance deadline to account for the Fairfax County Board of Zoning Appeals decision on the pending Variance/Special Permit application which was filed on December 14, 2016. The delay in submitting this application is reasonable when considering that Applicant was originally contemplating a much more involved Special Permit Application to allow for the Detached Accessory Structure to be used as an Accessory Dwelling Unit. By way of background, Appellant purchased the Subject Property in June 2015 from the prior owners who had advertised and misrepresented the accessory structure as a legal "guest house" (habitable space), in contravention of the actual knowledge that these prior owners had pursuant to a March 27, 2013 Vested Rights Determination that this accessory structure was an existing non-conforming structure which had been approved for 610 square feet of garage space and 200 square feet of storage space and was not to be used for any other use. Appellant purchased the Subject Property with the interior configuration of the accessory structure being as it was discovered at the time of the Notice of Violation, and the conversion from a garage/storage space to a Dwelling Unit had likely been done by the prior owners. In order for the Detached Accessory Structure to be eligible for consideration as an Accessory Dwelling Unit, Appellant would need to propose a way to connect it to the main dwelling unit, in a way that would be recognized by Zoning Staff. After meetings and discussions with Zoning Staff and considering the feasibility of such an action and the budget that would be required, Appellant filed a more streamlined Variance/Special Permit Application, which will lead to the removal of the kitchen facilities. Zoning Staff has indicated that it would support such an application and Appellant is diligently revising the application to have it eligible for hearing by the Board of Zoning Appeals in March 2017 or soon thereafter. Once the Variance/Special Permit is granted, Appellant will diligently pursue filing the required building permits and scheduling the proper inspections to resolve the Notice of Violation at that time.

Appellant reserve the right to amend and supplement this Statement in Support of Appeal / Additional Grounds of Defense / Statement of Relief Sought up to and including the date of the State Building Code Technical Review Board hearing on this matter. Please feel free to contact the undersigned should you require further information or clarification of the arguments presented on Appellant's behalf.

State Building Code Technical Review Board  
Appellant: Nihad Jaaffar AliAkbar (Owner)  
Appeal of Fairfax County Board of Building Code Appeals Decision in  
Appeal No. 160427.0AP  
Subject Property: 3706 Franconia Road, Alexandria, VA 22310-2130  
January 4, 2017  
Page 4 of 4

---

Respectfully submitted,

NIHAD JAAFFAR ALIAKBAR  
By Counsel



Aristotelis A. Chronis (VSB # 45267)

CHRONIS, LLC

1145 N. Vernon St.

Arlington, VA 22201

703-888-0353

703-888-0363 (fax)

[achronis@chronislaw.com](mailto:achronis@chronislaw.com)

Counsel for Appellant

 CHRONIS, LLC

# CHRONIS, LLC

ARISTOTELIS A. CHRONIS  
1145 N. VERNON ST.  
ARLINGTON, VA 22201  
TEL: 703.888.0353  
FAX: 703.888.0363  
achronis@chronislaw.com

## MEMORANDUM

To: Board of Zoning Appeals of Fairfax County, Virginia  
From: Aristotelis A. Chronis  
Date: May 27, 2016  
Re: Nihad Jaaffar AliAkbar  
Appeal of Notice of Violation dated April 29, 2016 citing violations of  
§2-501. Limitation on Number of Dwelling Units on a Lot, and  
§2-302(6). Accessory Structure or Use  
Subject Property: 3706 Franconia Road, Alexandria, VA 22310-2130  
(Tax Map # 0822 05B 0022)  
Case #201507829, SR #125648

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## STATEMENT IN SUPPORT OF APPEAL / GROUNDS OF DEFENSE

Nihad Jaaffar AliAkbar (Appellant) by counsel, respectfully submits this Statement in Support of Appeal / Grounds of Defense in support of the above-referenced appeal of a Notice of Violation dated April 29, 2016 filed against 3706 Franconia Road, Alexandria, VA 22310-2130 (the "Subject Property"). Appellant appeals this Notice of Violation and asks that it be overturned or modified by the Board of Zoning Appeals on the following grounds:

**Violations:** §2-501. Limitation on Number of Dwelling Units on a Lot /  
§2-302(6) Accessory Structure or Use

Appellant appeals these interrelated violations based on the existence of the "second kitchen" and other facilities located within the accessory structure when he purchased the Subject Property and his desire to achieve Compliance in the least intrusive manner possible by potentially salvaging and legally converting the use of the Accessory Structure through the appropriate permits. Applying for and obtaining these permits would require time beyond the 30-day Compliance Deadline set forth in the Violation Notice, and therefore Appellant argues that such Compliance Deadline is unreasonable under the circumstances.

By way of background, Mr. AliAkbar purchased the Subject Property in June 2015 from the prior owners Ashraf Gadelrab & Souad Bendoumali who had advertised and misrepresented the accessory structure as a legal "guest house" (habitable space), in contravention of the actual knowledge that these prior owners had pursuant to the March 27, 2013 Vested Rights Determination that this accessory structure was an existing non-conforming structure which had been approved for 610 square feet of garage space and 200 square feet of storage space and was not to be used for any other use. Mr. AliAkbar purchased the Subject Property with the interior configuration of the accessory structure being as it was discovered at the time of the Violation

Nihad Jaaffar AliAkbar  
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Tax Map # 0822 05B 0022  
Case #201507829, SR #125648  
May 27, 2016  
Page 2 of 3

Notice, and the conversion from a garage/storage space to a Dwelling Unit had likely been done by the prior owner who had further represented the use as a storage building in their correspondence to the Zoning Office seeking their Vested Rights Determination. Notably this Vested Rights Determination further identified the existence of a lot coverage violation due to asphalt located within the 25 foot minimum required rear yard and directed that it should be removed. There was no record however of a violation notice being issued and Mr. AliAkbar did not have actual knowledge of this prior Vested Rights Determination, which was not revealed on any Title Report or otherwise known to him prior to purchase. Had there been a zoning violation notice issued, in all likelihood the discovery of the conversion of the garage/storage use into a guest house use by these former owners would have been cited, and regardless Mr. AliAkbar would not have knowingly purchased the Subject Property with one or more Zoning Violations.

With this in mind, Mr. AliAkbar would like to explore what options if any exist for the accessory structure to be used as for something other than a garage/storage space, and would like to prevent the demolition of the interior of the accessory structure which was a determinative factor in him purchasing the Subject Property and which adds significant value to the Subject Property as well. Ideally, Mr. AliAkbar would like to apply and be granted a Special Permit to allow the Accessory Structure to remain in its current location and configuration. *This is one of the methods of Compliance set forth within the Violation Notice.* Such application would certainly not be able to be processed within the 30-day Compliance deadline which was set forth in the Violation Notice, and therefore Appellant is filing this Appeal to stay the enforcement of the Violation Notice pending the submission and consideration of the proper Zoning Application. Mr. AliAkbar would be seeking one of two alternatives through a Zoning Application; permission to use the accessory structure as an Accessory Dwelling Unit, which would thereby bring the violation of §2-501. Limitation on Number of Dwelling Units on a Lot, into compliance, or alternatively to otherwise be able to use the accessory structure for some alternative use other than the garage/storage use for which it is currently permitted. (Part of any Application would be seeking permission to allow for the pitched roof to remain instead of the flat roof, as the design of the flat roof itself was not allowing for proper drainage and likely led to the need for it to be replaced.) If some other use other than an Accessory Dwelling Unit would be permitted, then Appellant would argue that minimal removal of certain features could be accomplished to have the accessory structure cease being considered a separate dwelling unit under the definitions set forth in the Zoning Ordinance.

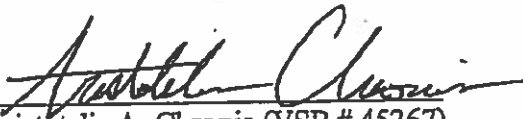
Nihad Jaaffar AliAkbar  
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Case #201507829, SR #125648  
May 27, 2016  
Page 3 of 3

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Appellants reserve the right to amend and supplement this Statement in Support of Appeal / Grounds of Defense up to and including the date of the Board of Zoning Appeals hearing on this matter, and further as necessary upon further investigation of the Subject Property, its development history including any County approvals, and after consultation with the Zoning Inspector and/or Staff.

Respectfully submitted,

NIHAD JAAFFAR ALIAKBAR  
By Counsel



Aristotelis A. Chronis (VSB # 45267)

CHRONIS, LLC

1145 N. Vernon St.

Arlington, VA 22201

703-888-0353

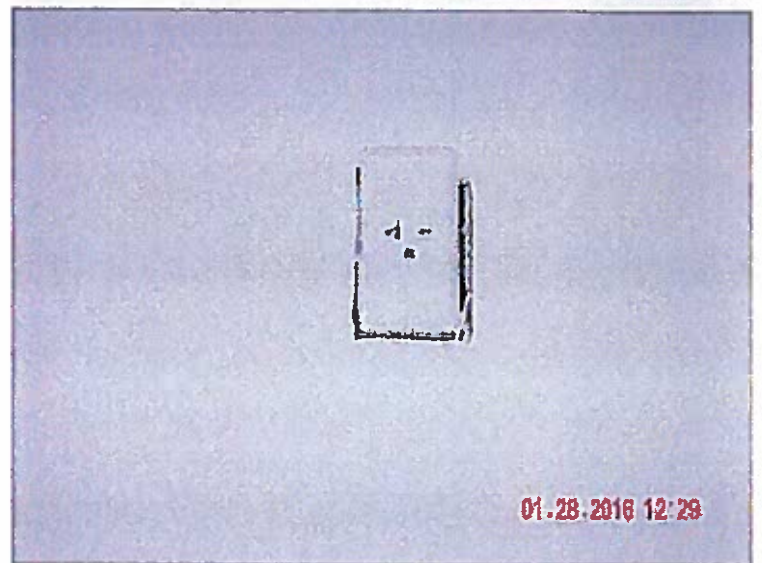
703-888-0363 (fax)

[achronis@chronislaw.com](mailto:achronis@chronislaw.com)

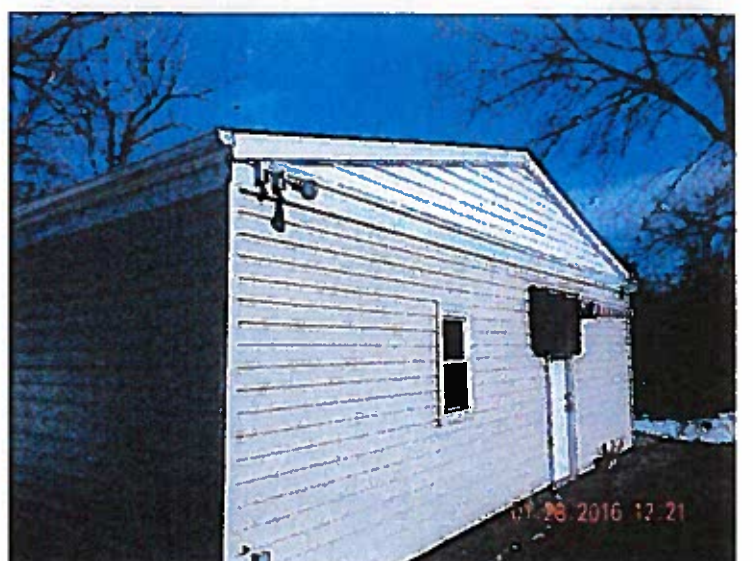
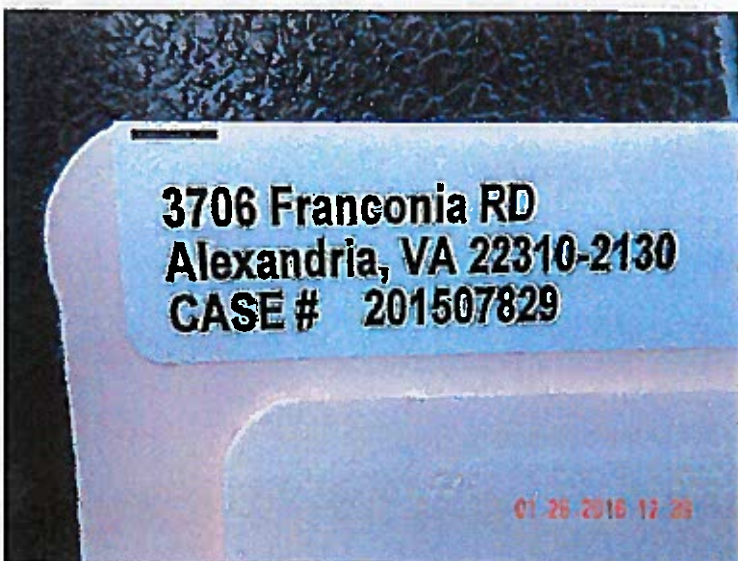
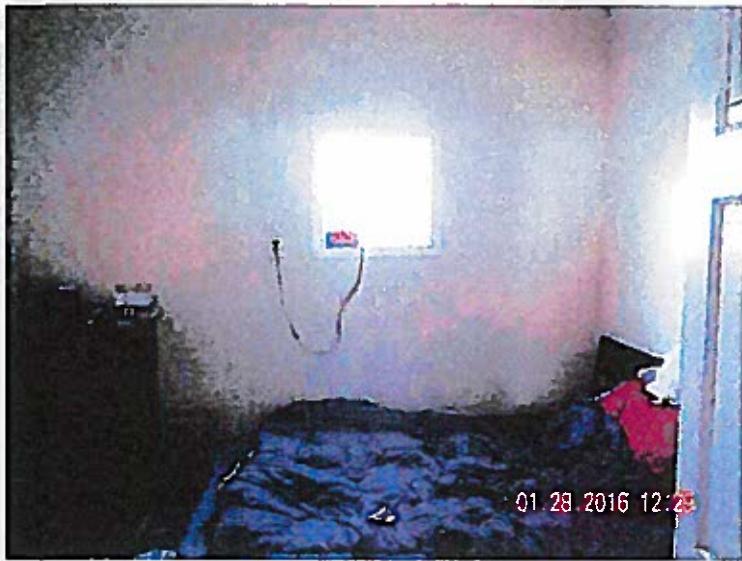
Counsel for Appellant

 CHRONIS, LLC

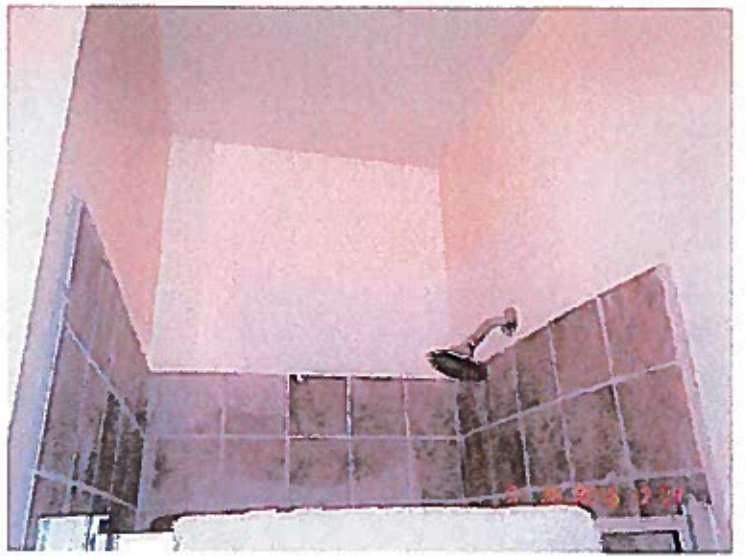
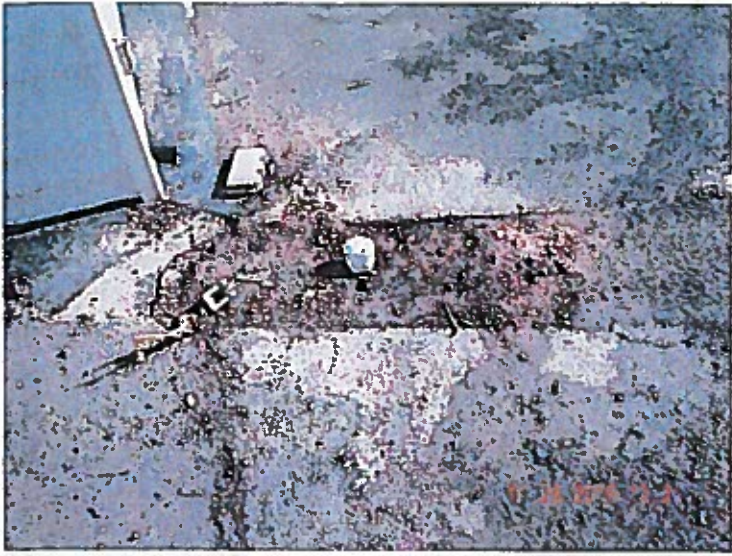














# County of Fairfax, Virginia


## MEMORANDUM

**DCC Received**

**AUG 19 2016**

**DATE:** August 18, 2016

**TO:** John F. Ribble, III, Chairman  
Members, Board of Zoning Appeals

**FROM:**  Cathy S. Belgin  
Deputy Zoning Administrator for Appeals

**SUBJECT:** Appeal Application A 2016-LE-011  
Nihad Jaaffar AliAkbar  
3706 Franconia Road, Alexandria, VA 22310  
Burgundy Farm, Section 5, Block B, Lot 22  
Tax Map Reference: 82-2 ((5)) (B) 0022  
Zoning District: R-3

Attached for your information is a copy of appeal application A 2016-LE-011 which was recently filed and accepted. The appeal has been scheduled for public hearing on November 16, 2016, at 9:00 a.m.

CSB/mb

Attachment: A/S

cc: Jeff C. McKay, Supervisor, Lee District  
James T. Migliaccio, Planning Commissioner, Lee District  
Fred Selden, Director, Department of Planning and Zoning  
Leslie B. Johnson, Zoning Administrator  
Elizabeth Perry, Senior Deputy Zoning Administrator for Zoning Enforcement/  
Property Maintenance, DCC  
Karen McClellan, Operations Manager, DCC  
Christopher Hooks, Code Compliance Investigator, DCC  
Lorraine A. Giovinazzo, Clerk, Board of Zoning Appeals  
Molly Bramble, Appeals Coordinator

Department of Planning and Zoning  
Zoning Administration Division  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035-5505  
Phone 703-324-1314 FAX 703-803-6372  
[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)





# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

## NOTICE OF VIOLATION Fairfax County Zoning Ordinance

**DATE OF ISSUANCE:** April 29, 2016  
**METHOD OF SERVICE:** OFFICE OF THE SHERIFF  
**LEGAL NOTICE ISSUED TO:** Nihad Jaaffar Aliakbar  
**ADDRESS:** 3706 Franconia Road  
Alexandria, Virginia 22310-2130  
**LOCATION OF VIOLATION:** 3706 Franconia Road  
Alexandria, Virginia 22310-2130  
**TAX MAP REF:** 0822 05B 0022  
**ZONING DISTRICT:** R-3  
**CASE #:** 201507829 **SR #:** 125648  
**ISSUING INVESTIGATOR:** Christopher Hooks, (703)324-4375

### POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

§ 18-903(1):	Zoning Violation	First Offense	Each Subsequent Offense
	§02.302.6	\$ 200.00	\$ 500.00
	§02.501	\$ 200.00	\$ 500.00
<b>TOTAL:</b>		<b>\$ 400.00</b>	<b>\$ 1000.00</b>

Dear Responsible Party:

An inspection of the above referenced property on April 05, 2016 revealed the following violations of the Fairfax County Zoning Ordinance:

#### § 2-501 Limitation on the Number of Dwelling Units on a Lot:

The inspection revealed there are two (2) complete and separate dwellings located on the lot of the above-referenced property. Part 3 of Article 20 of the Zoning Ordinance defines a dwelling unit as:

Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

Therefore, the presence of more than one dwelling unit on the above-referenced property is in violation of Sect. 2-501 of the Zoning Ordinance which states, in part:

There shall be not more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building....

You are hereby directed to clear this violation within thirty (30) days of the date of this notice. Compliance can be achieved as follows:

- Removing, on a permanent basis, all interior door locks that prevent the free and unfettered access to all common living areas or which may separate different levels of the structure; and
- Removing, on a permanent basis, all but one kitchen located on the property to include: the ovens, microwave, ranges, sinks, cabinets, countertops, refrigerators, and freezers or combinations thereof; all other appliances and accoutrements used or intended for use for cooking or eating, and all plumbing, electrical, and gas connections and piping; and
- Applying for and obtaining approval from the Fairfax County Building Official (12055 Government Center Parkway, Second Floor, Permit Application Center) for a valid demolition permit for the removal of all electrical circuits, plumbing fixtures and piping and natural gas piping systems which were installed to establish the second kitchen in the dwelling unit at this property, and obtaining a passing final inspection of such demolition work; and
- Ceasing, on a permanent basis, the use of all but one (1) dwelling unit, on the property, and restoring the property such that it contains no more than one (1) dwelling unit.

#### **§2.302 (6) ACCESSORY STRUCTURE OR USE:**

An inspection revealed the accessory structure located in the rear of the property has been altered by adding a pitched roof increasing the height of the structure.

No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Part 1 of Article 10.

You are hereby directed to clear this violation within thirty (30) days of the date of this Notice. Compliance can be accomplished by:

- Remove the accessory structure from the property in its entirety, or
- Relocate the accessory structure on the property meeting the side and rear setbacks requirements, or
- Restore the accessory structure to its former approved Vested Rights condition, (Zoning Administrator's determination), or
- Applying for and successfully obtaining a Special Permit to allow the Accessory Structure to remain in its current location and configuration.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$200.00 for each violation of the Zoning Ordinance cited herein for the first violation and \$500.00 for each violation of the Zoning ordinance cited herein for any subsequent violation, in accordance with Zoning Ordinance §18-903(1).

You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, a written statement setting forth the decision being appealed, the date of decision, the grounds for the appeal, how the appellant is an aggrieved party, any other information that you may wish to submit and a \$600.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA. For information regarding an appeal contact:

Zoning Administration Division  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035  
Office: (703)324-1314

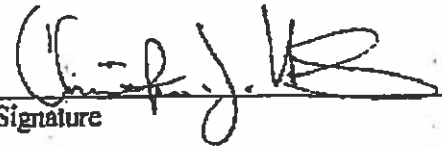
Information and forms can also be obtained at <http://www.fairfaxcounty.gov/dpz/bza/appeals/>.

If you have questions, would like to schedule an appointment to meet with an investigator, or schedule

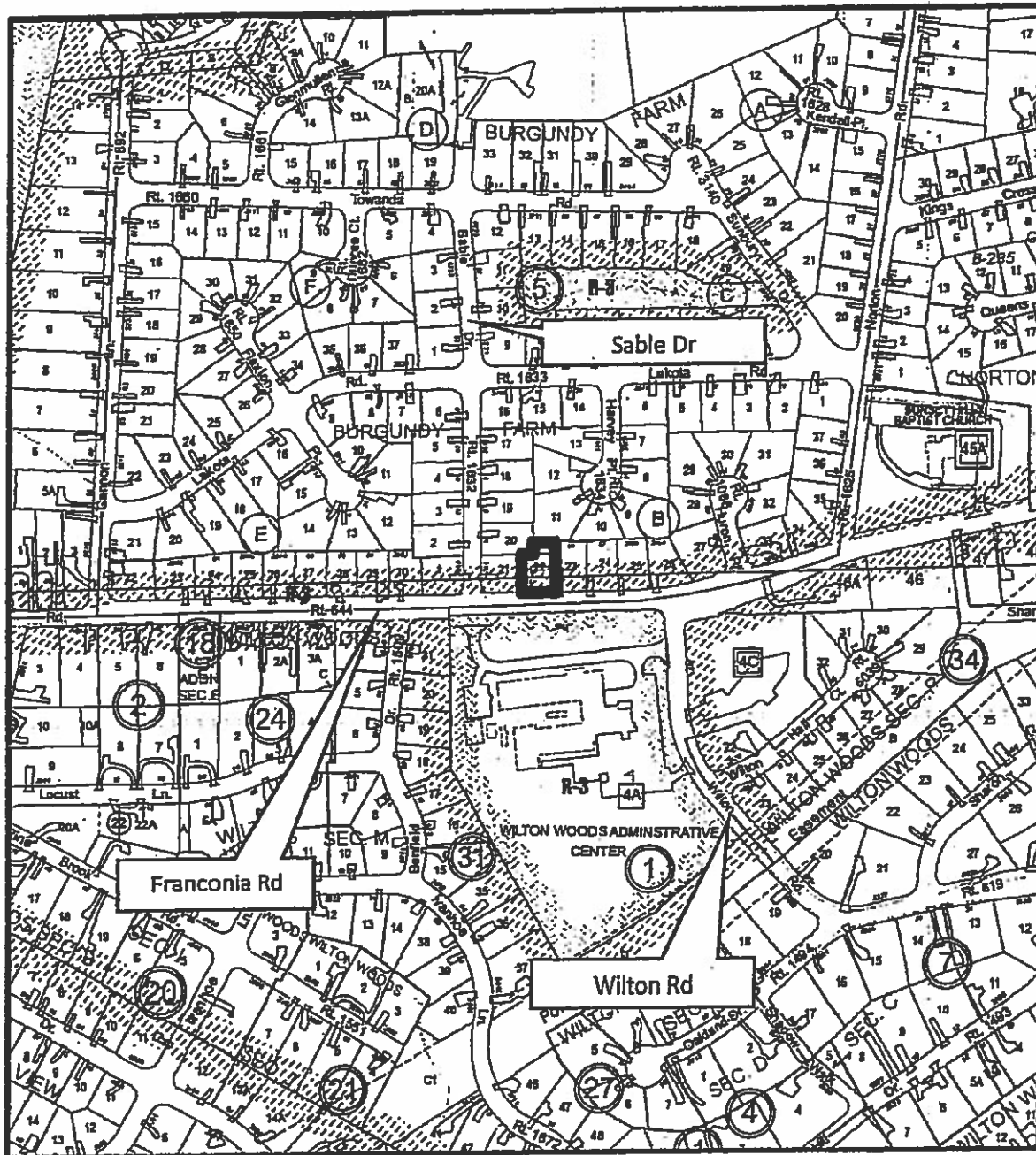
Nihad Jaaffar Aliakbar  
April 29, 2016  
SR 125648  
Page 4

a follow up inspection, please contact me directly at (703)324-4375. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:

  
Signature

Christopher Hooks  
Code Compliance Investigator I  
(703)324-4375  
Christopher.Hooks@fairfaxcounty.gov







COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR APPEAL

Please type or  
Print in Black Ink

FAIRFAX COUNTY  
RECEIVED

MAY 27 2016

DIVISION OF  
ZONING ADMINISTRATION

APPLICATION NO. A 2016-LE-011  
(Assigned by Staff)

NAME OF APPELLANT: Nihad Jaaffar AliAkbar

NATURE OF THE APPEAL:

Appeal of Notice of Violation dated April 29, 2016 (Case #201507829; SR #: 125648) citing violations of  
Section 2-501. Limitation on Number of Dwelling Units on a Lot; and 2-302(6) Accessory Structure or Use  
at 3706 Franconia Road, Alexandria, VA 22310-2130.

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH  
IS SUBJECT TO THE APPEAL April 29, 2016

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:

Appellant is current record owner and resident of the Subject Property.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 3706 Franconia Road, Alexandria, VA 22310-2130.

TAX MAP DESCRIPTION: 0822 05B 0022

Aristotelis A. Chronis, Esq., Attorney for Appellant  
Type or Print Name of Appellant or Agent

Aristotelis A. Chronis  
Signature of Appellant or Agent

CHRONIS, LLC, 1145 N. Vernon St., Arlington, VA 22201  
Address

Telephone No: 703-888-0353 Home Work Cell

Please type or print name, address, and phone number of contact person if different from above:

DO NOT WRITE IN THIS SPACE

Subdivision Name: Burgundy Farm Sec 5, BIK B, LOT 22

Total Area (Acres/Square Feet): 10,350 sq ft

Present Zoning: R-3

Supervisor District: Lee

Date application received: MAY 27, 2016 Application Fee Paid: \$ 600

Date application accepted: AUGUST 18, 2016

## McMahan, Alan (DHCD)

---

**From:** Felipe, Manuel <Manuel.Felipe@fairfaxcounty.gov>  
**Sent:** Thursday, March 02, 2017 8:55 AM  
**To:** McMahan, Alan (DHCD)  
**Cc:** Felipe, Manuel  
**Subject:** Sent from Snipping Tool  
**Attachments:** SnipImage.JPG; DSCN2288.jpg; DSCN2287.jpg

Alan,

The picture attached revealed the new A-frame roof with black shingles, on the secondary structure located at 3706 Franconia Road Alexandria, Virginia captured from Fairfax County Government Program. Notice the date on the top left hand corner of this program April 14, 2016. The property is the second shingle family dwelling from the corner of Sable Drive, which a white fence and the house with the front porch.

The previous e-mail I send you with a similar picture revealed the same dwelling located at 3706 Franconia Road Alexandria, Virginia with the date of April 06, 2015 revealed the flat (slope) roof. The owner purchase this property on June 22, 2015. The exterior work was performed during his ownership, which did not have the benefits of permits and inspections. Per section 36- 105 and 36 -106 of the Virginia Uniform Statewide Building Code (VUSBC).

The accessory structure was approved to remain as work shop on March 27, 2013 with a flat roof due to the vested rights. A building permit # 86119B1030 was approved on April 29, 1986 for an accessory structure 610 square feet of garage space and 200 square feet of storage space. The interior of this accessory structure which was approved to remain with a flat roof as a workshop, now is a second dwelling which contains a kitchen, bedroom, bathroom, and living room with no benefits of the require permits and inspections per section 36-105 and section 36-106 of the VUSBC. A copy of the vested rights determination is attached as a picture format, which was issued to the previous owner who sold the property to Mr. Aliakbar.

This matter is a civil issue between the previous owner and the current owner which the Department of Code Compliance do not get between. The fact that permits were not issue for the construction, installation, and alteration to the roof, electrical, plumbing, mechanical, framing, insulation, interior and exterior covering should not be dismissed and should be enforce per section 36-105 and 36-106 VUSBC.

Thank you very much.

Manuel Felipe  
Department of Code Compliance  
Investigator unit  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035  
Office 703 324-1190  
Cell 571-363-9048  
Main 703-324-1300  
Fax 703-653-9459









# County of Fairfax, Virginia

To protect and enhance the quality of life for the people, businesses, and diverse communities of Fairfax County

March 26, 2013

Ashraf Gadeeb & Souad Boudoumail  
3796 Francoids Road  
Alexandria, Virginia 22310



RE: Vested Rights Determination  
3796 Francoids Road  
Burgundy Farm, Lot 22, Block B, Section 5  
Tax Map Ref.: 82-2 ((5)) (B) 22  
Zoning District: R-3

Dear Mr. Gadeeb & Ms. Boudoumail:

This letter is in response to your written inquiry dated February 27, 2013, requesting a vested rights determination for the referenced property. In a brief follow-up meeting, you indicated that you would like to replace the accessory structure's deteriorated flat roof with a pitched roof. You stated that the existing flat roof is approximately 8 feet above finished ground level. Supplementing your request is a plat dated March 4, 2013, showing a single family dwelling, an accessory structure (labeled frame workshop) and driveway pavement covering most of the rear yard. According to the plat, the accessory structure is located about 13 feet from the side lot line and 4 feet from the rear lot line. In your letter, you refer to the structure as a storage building, though you stated that you are not currently using it due to the deteriorated roof.

The referenced property is zoned R-3 Residential District, Three Dwelling Units/Acre and is developed with a single family dwelling built in 1959 and an accessory structure. The R-3 District has the following minimum yard requirements: Front - 30 feet; Sides - 12 feet and Rear - 25 feet. Pursuant to Par 10 of Sect. 10-104 of the Zoning Ordinance, a freestanding accessory structure greater than seven feet in height (measured from the highest point of the roof, to the lowest point at the grade) may not be located in a minimum required side yard and must also be located at least a distance equal to its height from the rear lot line. While the structure meets the 12 foot minimum required side yard, it does not meet the approximately 8 foot setback requirement from the rear lot line. Furthermore, the referenced property is subject to a minimum rear yard coverage limitation of 30 percent, pursuant to Par 3 of Sect. 10-103. However, the plat shows the structure exceeding the coverage limitation, as it covers about 43 percent (65 percent if including driveway pavement) of the 25 foot minimum required rear yard. For these reasons, the structure does not meet Zoning Ordinance location and coverage requirements.

According to our records, Building Permit #86119B1030 was approved on April 29, 1986 for an

## REQUEST FOR INTERPRETATION

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD  
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT  
Main Street Centre  
600 E. Main Street, Suite 300  
Richmond, Virginia 23219-1321  
Tel: (804) 371-7150 Fax: (804) 371-7092

FROM: Pernell Wheeler, Engineer III  
Fairfax County Land Development Services  
Building Division  
12055 Government Center Pkwy, Suite 316  
Fairfax, Virginia 22035

Phone: 703-324-1682

Code: 2012 Virginia Construction Code

Section(s): 407.4.1.1-Special Locking Arrangements and 1008.1.10 Panic Hardware

Submitted by (signature): Pernell Wheeler Date: May 2, 2017

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### QUESTION(S):

Nursing Homes-Use Group I-2, typically includes dining areas, waiting rooms, and multipurpose rooms with a occupant load that requires a Group A classification.

Question: Are required exit doors, to include interior exit stairways and exit doors to the exterior, permitted to be equipped with delayed egress locks?

Note that section 1008.1.10 required panic hardware in Group A.

Note that section 1008.1.9.7 Delayed egress locks are not permitted in Group A.

Thanks!

Alan

**Alan McMahan, MPA, C.B.O.**

Senior Construction Inspector II and  
Secretary - State Building Code Technical Review Board

Department of Housing & Community Development

Division of Building & Fire Regulation

State Building Code Office

600 East Main Street, Suite 300

Richmond, Virginia 23219

(804) 371-7175

(804) 371-7092 - fax

[alan.mcmahan@dhcd.virginia.gov](mailto:alan.mcmahan@dhcd.virginia.gov)

**Code Connection Blog** <http://dhcdcodeconnection.wordpress.com>

**Click and "follow" our Blog**

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**From:** Wheeler, Pernell [<mailto:Pernell.Wheeler@fairfaxcounty.gov>]

**Sent:** Wednesday, May 10, 2017 4:13 PM

**To:** McMahan, Alan (DHCD)

**Cc:** Foley, Brian

**Subject:** RE: Request for Interpretation to the Review Board

Hello Alan, thank you for the invite, unfortunately, I will be out of town from Friday May 19 until Monday May 22. If you like my take on the application of this code section, let me know. Thanks again....

**Pernell T. Wheeler- Engineer III**

DPWES-LDS-Building Plan Review and Inspections

12055 Government Center Parkway, suite 316

Fairfax, Virginia 22035-5500

703-324-1682

[pernell.wheeler@fairfaxcounty.gov](mailto:pernell.wheeler@fairfaxcounty.gov)



---

**From:** McMahan, Alan (DHCD) [<mailto:Alan.McMahan@dhcd.virginia.gov>]

**Sent:** Monday, May 8, 2017 3:07 PM

**To:** Wheeler, Pernell <[Pernell.Wheeler@fairfaxcounty.gov](mailto:Pernell.Wheeler@fairfaxcounty.gov)>

**Cc:** Luter, Travis (DHCD) <[Travis.Luter@dhcd.virginia.gov](mailto:Travis.Luter@dhcd.virginia.gov)>

**Subject:** [Caution: Message contains Redirect URL content] Request for Interpretation to the Review Board

Pernell,